

RESOLUTION NO. 25-R-021

**A RESOLUTION OF THE CITY COUNCIL OF SCHERTZ, TEXAS
AUTHORIZING THE APPROVAL OF A DEVELOPMENT AGREEMENT
WITH SCHERTZ BFR LLC FOR APPROXIMATELY 30.5 ACRES OF
LAND AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City staff of the City of Schertz (the “City”) has worked with Schertz BFR LLC (“Owner”) to enter into a Development Agreements for approximately 30.5 acres of land located on the east side of FM 1518, approximately 165 feet south of Hollering Vine after recognizing the mutual benefits of doing so; and

WHEREAS, Texas Local Government Code Section 212.172 allows the City to enter into an agreement with an owner of land that is located in the extraterritorial jurisdiction of the municipality; and

WHEREAS, the City staff has recommended that the development agreement for the property be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Development Agreement with Schertz BFR LLC (Owner) generally per the attached Exhibit A, subject to changes approved by the City Manager and City Attorney.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____th day of _____, 2025.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

City Secretary, Sheila Edmondson

(CITY SEAL)

Exhibit A
Development Agreement

STATE OF TEXAS
COUNTY OF BEXAR

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CITY OF SCHERTZ
DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (“Agreement”) is entered into effective as of the ____ day of February, 2025 (“Effective Date”), by and between the **CITY OF SCHERTZ**, Texas, a Texas Municipal Corporation (“City”) and **SCHERTZ BFR, LLC, A TEXAS LIMITED LIABILITY COMPANY** (“Owner”). The City and the Owner may be individually referred to herein as “Party” or collectively as the “Parties”.

WHEREAS, Owner owns approximately 30.35 acres (“Property”) located at 12535 Woman Hollering Road, more particularly described and Bexar County Appraisal District Identification Number 1150385, within the Extraterritorial Jurisdiction of the City of Schertz, Bexar County (“County”), Texas, as further described in **Exhibit “A”**, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, the Property is to be developed as a multi-family residential community including associated infrastructure and other public improvements (as further described herein, the “Project”); and

WHEREAS, the Property is located within the boundaries of the City’s Certificate of Convenience and Necessity (“CCN”) and the Owner is requesting water and sewer service from the City; and

WHEREAS, in exchange for utility service and other commitments outlined in this Agreement, the Owner has agreed to voluntary, full purpose annexation of the Property following completion of the Project, which will thereafter to be included into the City’s corporate limits; and

WHEREAS, necessary police, public safety, and other municipal utility services will be provided to the Property for the Project as herein described; and

WHEREAS, the City enters into this Agreement pursuant to the authority granted thereto under the Constitution and general laws of the State of Texas, including (particularly) Article III, Section 52-a of the Texas Constitution, Subchapter G of Chapter 212, and the Authorizing Ordinance; and

WHEREAS, the City Council has found that development of the Property in compliance with this Agreement will serve a public purpose and benefit the City and is in the best interests of the residents of the City; and

WHEREAS, in recognition of the mutual benefits to be derived from the controlled and planned development of the Property, the Owner and City desire to enter into this Agreement to evidence the terms of their mutual agreement; and

WHEREAS, the City of Schertz City Council authorized and approved this Agreement at a regularly scheduled council meeting subject to the Open Meetings Act in compliance with the laws of the State of Texas and the ordinances of the City on February 4, 2025.

NOW THEREFORE, in consideration of the terms and conditions described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

I. GENERAL TERMS AND CONDITIONS

1.01 Agreement. The Owner and City agree that the Property shall be annexed into the City in accordance with the terms of this Agreement. Additionally, the City agrees to comply with the terms of this Agreement, including providing water and sewer service to the Project.

1.02 Project. The Project shall include multiple residential structures with up to 230 residential units on one platted lot. The Project is intended to include attached and detached units.

1.03 Plat Approval & Building Review. The Parties agree that the Property shall be platted through the County and in accordance with County standards, provided however, water and sewer improvements shall be designed in accordance with City standards as of the Effective Date. Building construction shall be in accordance with County standards.

1.04 Public Infrastructure and Service.

1.04.1 The City hereby agrees to provide the following:

1.04.1.1 Connection to City utilities and confirmation of capacity to serve the Project (“Capacity”).

1.04.1.2 With this Agreement the City agrees to assign and/or allocate up to 230 Land Use Equivalents (“LUEs”) in water capacity and service. The Parties agreement that the Owner shall pay the City a water impact fee of \$2,934 per LUE regardless of any City increase in impact fee rates.

1.04.1.3 With this Agreement the City agrees to assign and/or allocate 230 LUEs in sewer capacity and service from the Woman Hollering wastewater line. The Parties agree that the Owner shall pay the City a sewer impact fee of \$1,668 per LUE regardless of any City increase in impact fee rates.

1.04.2 Additional Impact Fees/Dedications. The Parties agree that no impact fees other than water and sewer shall be due for the Project. Further, parkland dedication requirements shall not apply.

1.04.3 Cost of Improvements. The Owner shall be responsible for the payment of all costs associated with the extension and improvements of the infrastructure required to properly serve the development of the Property and the Project, unless provided otherwise herein. If the City requires the Owner to plan for or construct any infrastructure not required to serve the development of the Property or Project, Owner shall receive credit or payment in accordance with the Code and State law.

1.05 Access. The City acknowledges and agrees that the location and sufficiency of access to the Property and Project is to be determined by Bexar County and TxDOT at the time of platting and permitting of the Project. The City shall not object or require any changes to Property access, whether it be on FM 1518 or Woman Hollering Road and no matter the purpose of said access (primary, secondary, or for emergency purposes).

1.06 Annexation. As consideration for this Agreement, the Owner agrees to full purpose annexation of the Property at the times described herein.

1.06.1 Within three (3) months of receipt of a final certificate of occupancy (or the equivalent approval from the permitting authority, which is Bexar County), the Owner shall be deemed to have submitted a petition for full-purpose, voluntary annexation to the City for the Property. A copy of the form of Annexation Petition is attached as **Exhibit “B”**. Concurrent with annexation of the Property, the City, with the Owner’s consent, shall initiate a zoning change to establish a zoning district that as closely as possible reflects the terms and conditions of this Agreement. Project completion shall be defined as receipt of a certificate of occupancy for the final residential structure of the Project.

1.07 Zoning. The Owner acknowledges and agrees that the City may zone the Property in a manner consistent with the uses hereunder contemplated, but this Agreement does not constitute a contract for specific

zoning. Provided however, the City is permitted pursuant to Texas Local Government Code Section 212.172 to specify the uses and development of the land before and after annexation, and understand and acknowledge the permissibility of the Project. The City agrees that no matter the zoning of the Property, the Project shall be considered conforming with City standards. The City will not withhold issue City certificates of occupancy for the structures if required for the structures upon annexation based on conformance with zoning.

1.08 Development Standards. Following annexation, all City of Schertz codes and ordinances in effect on the date of annexation shall govern. In the event of a conflict between this Agreement and the Schertz Unified Development Code (“UDC”) or the City’s Codes and Ordinances, this Agreement shall control. Provided, however, the City agrees that improvements on the site existing as of Annexation that have received any necessary approvals from the County shall be deemed to be conforming with City requirements.

1.09 Term. The term of this Agreement will commence on the Effective Date and continue for forty-five (45) years thereafter (“Term”), unless sooner terminated under this Agreement.

1.10 Enforcement and Default. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

1.10.1 This Agreement may be enforced by the Owner, including successors and assigns, or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

1.11 Remedies for Default. If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party’s obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement or other enforcement remedies the City may possess under its municipal regulatory authority.

1.11.1 Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

II. MISCELLANEOUS PROVISIONS

2.01 Covenant Running With the Land. This Agreement shall be recorded in the Official Property Records of Bexar County and shall be a covenant running with the land binding upon all parties having any right, title or interest in the Property or any part thereof, including their heirs, successors and assigns.

2.02 Authority, Applicable Rules and Right to Continue Development.

2.02.1 This Agreement is entered under the statutory authority of Sections 42.042, 43.0672 and 212.172 of the Texas Local Government Code and pursuant to Section 21.4.10 of the UDC. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.

2.02.2 Execution of this agreement, under Section 212.172 of the Texas Local Government Code, constitutes a permit under Chapter 245 of the Texas Local Government Code. In addition, the City acknowledges and agrees that (1) the use and development contemplated in and authorized by this Agreement was planned for the Property more than ninety (90) days prior to the effective date of this Agreement and, therefore, more than ninety (90) days prior to the effective date of annexation of the Property, and (2) the Owner has filed a completed application for the initial authorization with the City prior to the institution of any annexation proceedings related to the Property. As a result of the foregoing sentence, Section 43.002 of the Texas Local Government Code applies to the uses and development of the Property contemplated in and authorized by this Agreement.

2.02.3 In consideration of the Owner agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Property, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Property. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Property will apply to the Property if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owner obligations or decreasing Owner rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency, or a moratorium authorized by Subchapter E, Chapter 212 of the Texas Local Government Code.

2.03 Entire Agreement; Parties in Interest. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be terminated or amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

2.04 Recordation. Pursuant to the requirements of Section 212.172(f), Texas Local Government Code, this Agreement shall be recorded in the official public records of Bexar County, Texas. The terms of this Agreement shall be binding upon: (a) the Parties; (b) the Parties' successors and assigns; (c) the Property; and (d) future Owner of all or any portion of the Property.

2.05 No Oral or Implied Waiver. The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other Party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

2.06 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

2.07 No Personal Liability. None of the members of the City Council, nor any officer, agent, or employee of the City, shall be charged personally by the Owner with any liability, or be held liable to the Owner under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach, of this Agreement.

2.08 Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

2.09 Provisions Severable. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

2.10 Exhibits, Headings, and Assumptions. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.

2.11 Force Majeure. The term "force majeure" as used herein shall mean and refer to Acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, devil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability.

2.11.1 If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

2.12 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State. This Agreement is performable in Bexar County. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction located in Bexar County. In the event that a Party initiates a cause of action in court, the prevailing party shall be entitled to reasonable and necessary attorney's fees and costs of court.

2.13 Notices. All notices, demands and requests required hereunder shall be in writing and shall be deemed to have been properly delivered and received (i) as of the date of delivery to the addresses set forth below if personally delivered or delivered by facsimile machine, with confirmation of delivery (in the event a facsimile is sent after 5:00 p.m. central standard time, it shall be deemed to have been received on the next day), or email (as indicated below); (ii) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (iii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to City: City of Schertz
Attn: City Manager
1400 Schertz Pkwy.
Schertz, Texas 78154

With a copy to:

City of Schertz
Attn: City Attorney

1400 Schertz Pkwy.
Schertz, Texas 78154

If to Owner: Schertz BFR LLC
13449 NW Military Hwy, Suite 108-613
Shavano Park, TX 78231

With a copy to:

Killen, Griffin & Farrimond, PLLC
Ashley Farrimond
10101 Reunion Place Suite 250
San Antonio, Texas 78216

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

SIGNATURE PAGES TO FOLLOW

OWNER:

**SCHERTZ BFR LLC, A LIMITED LIABILITY
COMPANY**

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____day of February, 2025, by _____ who acknowledged that he is authorized to execute this document on behalf of said limited liability company.

Notary Public, State of Texas

EXHIBIT A
THE PROPERTY

EXHIBIT B
ANNEXATION PETITION